IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4259 of 2006
DATE OF DECISION: 12.9.2006

New India Assurance Company Ltd.

...Appellant

versus

Balbir Kaur and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice Mahesh Grover.

Present: Mr.P.S.Saini, Advocate,
for the appellant.

UMA NATH SINGH, J. (ORAL)

In this FAO by the Insurance Company against an award dated 9.6.2006 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Hoshiarpur, in MAC Petition No.45 of 17.8.2004, learned counsel submitted that the Insurance Company was granted permission under Section 170 of the Motor Vehicles Act, 1988 (for short `the Act') to contest the case on merits. Admittedly, the Insurance Company has satisfied `the own damage claim', however, strangely enough, it is questioning the award on the grounds of validity of driving licence, negligence and quantum.

We have carefully considered the submissions of learned counsel and perused the award. Admittedly, the renewed licence issued by the Licencing Authority, Hoshiarpur, has been found to be valid. The Insurance Company did not make any effort to find out the status of the original driving licence said to have been issued by the Licencing Authority, Bombay. Learned counsel only relied on the statement of the Driver (RW1) in cross-examination to, say that he could not have been issued the original driving licence from Bombay. Needless to say that onus to prove that driving licence was fake, was on the Insurance Company, and

evidently, no material has been placed on record to take a different view. Hence, the first submission on the question of driving licence fails. As regards negligence, according to learned counsel, the deceased would not have died had he not tried to over take a stationary tractor. This submission also does not find favour with the Court as the deceased was going to his destination, and he was not supposed to keep standing behind a stationary tractor. As regards the third submission on quantum, the deceased was in the occupation of labour contract with a private company, namely, M/s Sonalika Industrial Corporation. Form 16 produced by RW3, Deputy Manager of the company, indicated that the deceased was being paid approximately Rs.2,50,000/- per annum after deducting the income tax at source. Normally, in a case where there is no evidence to assess the income, the income is assessed on notional basis as a labourer. Even in such cases, the amount varies between Rs.2500/- to Rs.3000/-. In this case, looking at the evidence of the wife so also Form No.16 placed on record, the Tribunal appears to be correct in assessing the per month income of the deceased at Rs.9,000/-. Moreover, the Tribunal has only applied the multiplier of 9, which appears to be on lower side and has deducted 1/3rd towards personal expenses, although the claimants are the wife and two minor children.

Thus, we do not find any infirmity with the award. Hence, the FAO is dismissed in limine.

(UMA NATH SINGH)
JUDGE

September 12, 2006 **(MAHESH GROVER)**
pk **JUDGE**